

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

March 22, 1993
AO-93-05

Karen L. MacNutt
129 Minot Street
Dorchester, MA 02122

Re: Depository Committee Requirement to Open
Bank Account

Dear Ms. MacNutt:

This letter is in response to your September 10, 1992, letter requesting an advisory opinion as to whether your political committee has to open up an account at the designated depository bank. I apologize for the delay in my reply.

In your letter and more extensively in telephone conversations with Peter Sturges, General Counsel at the Office of Campaign and Political Finance ("OCPF") you stated that you are currently a candidate for statewide or county office and have filed the relevant forms required of statewide or county (so-called depository) candidates including CPF Form D103 (Certificate of Appointment of Depository). You have also stated that neither you nor your political committee, the Committee to Elect Karen MacNutt ("Committee"), has spent or raised money on your behalf.¹ On August 28, 1992, you received a letter from OCPF which informed you that OCPF had not received any bank reports by your depository, Shawmut Bank, for the account entitled Committee to Elect Karen MacNutt. This notification led to your present inquiry.

You have indicated that on CPF Form D103 you stated that neither you, nor the Committee would be opening an account with your designated depository at this time and that was the reason why OCPF did not subsequently receive any bank reports from the depository.

1. In fact, if you were to open the depository account you have been informed by the bank that you would have to pay a monthly fee. As a result you would have to solicit contributions and make expenditures in order to pay for the bank fees.

You would like to know if the Committee must open an account even though the Committee has not conducted any financial activity. In effect, you ask if the note on the bottom of CPF Form D103, which states that the option not to open an account is permitted to a candidate only, is a statutory mandate.

Section 19(a) and section 19(e) of M.G.L. c.55, the campaign finance law, set forth the relevant law regarding appointing a depository and opening an account. Section 19(a) provides that depository candidates, upon the organization of a political committee or upon becoming a candidate shall designate as a depository for campaign funds, a national bank or trust company. The candidate must also authorize the bank or trust company to submit the reports required by section 19(e). Finally, section 19(e) requires that the cashier or treasurer of the depository bank file with the director by the fifth and twentieth of each month, while such account is in existence, a statement of the account's balance at certain times of the month.

Section 19 does not distinguish between the reporting requirements for candidates and the reporting requirements for political committees and only mandates the reporting of an account balance while such account is in existence. Therefore, until the candidate or the candidate's political committee actually engages in financial activity, an account need not be opened and the appointment of a depository is sufficient.²

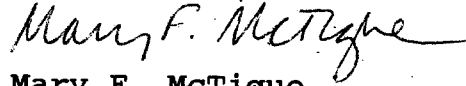
For the above reasons, it is this office's opinion that you and your political committee are not required to open a depository account and, therefore, that no bank reports are due at this time. I assume, of course, that neither you nor your political committee is receiving contributions or making expenditures for the purpose of your nomination or election to public office. You may disregard OCPF's August 28, 1992, letter on this matter.

This opinion has been rendered solely on the basis of the representations made in your letter as well as telephone conversations with this office's General Counsel and solely in the context of M.G.L. c.55.

2. Most political committees begin receiving contributions and making expenditures contemporaneously or soon after the designation of a depository. Therefore, the note, on the Certificate of Depository, which you have referenced is intended as a practical reminder to political committees to open an account since, in most cases where there is campaign finance activity, the opening of an account is required as a matter of law.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Very truly yours,

A handwritten signature in cursive script, reading "Mary F. McTigue". The signature is written in dark ink and is positioned above the typed name and title.

Mary F. McTigue
Director

cc: Lisa C. McDonough, Auditor